

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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EAST END ERUV ASSOCIATION,  
:  
CV-11-213  
(LDW)  
Plaintiff,  
:  
United States Courthouse  
Central Islip, New York  
-against-  
WESTHAMPTON, et al.,  
:  
May 18, 2011  
Defendants. 11 a.m.  
-----X

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LEONARD D. WEXLER  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: ROBERT SUGARMAN, ESQ.  
YEHUDAH L. BUCHWEITZ, ESQ.  
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New York, New York 10153  
  
For the Defendants: JELTJE DEJONG, ESQ.  
Devitt Spellman Barrett, LLP  
  
MARCI HAMILTON, ESQ.  
Benjamin Cardozo School of Law  
For Village of Quogue  
  
BRIAN S. SOKOLOFF, ESQ.  
LEO DORFMAN, ESQ.  
Sokoloff Stern  
For Village of Westhampton Beach

1 APPEARANCES CONT'D:

2 For the Defendants: MAUREEN T. LICCIONE, ESQ.  
3 ROBERT V. GUIDO, ESQ.  
4 Jaspan Schlesinger  
For Town of Southampton

5  
6  
7 ALSO PRESENT: MICHAEL E. WILES, ESQ.  
8 ERICA S. WEISGERBER, ESQ.  
Debevoise & Plimpton  
9 For Verizon New York

10 MICHAEL A. PINCUS, ESQ.  
Associate General Counsel  
11 For LIPA  
12  
13  
14  
15  
16  
17  
18  
19

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23  
24 Proceedings recorded by mechanical stenography.  
25 Transcript produced by CAT.

1           LAW CLERK: East End Eruv Association v The  
2 Village of Southampton Beach.

3           Your appearances, please.

4           MR. SUGARMAN: Robert Sugarman on behalf of  
5 plaintiffs.

6           MS. DEJONG: Jeltje DeJong on behalf of the  
7 Village of Quogue and all the Quogue defendants.

8           Good morning, your Honor.

9           MS. HAMILTON: Marci Hamilton on behalf of  
10 Quogue and all the Quogue defendants.

11          MR. SOKOLOFF: Brian Sokoloff for the Village of  
12 Westhampton Beach and the Westhampton Beach defendants.

13          MR. DORFMAN: Leo Dorfman for the same  
14 defendants, your Honor.

15          MS. LICCIONE: Maureen Liccione for all of the  
16 East Hampton defendants, and I'm here with my colleague  
17 Robert Guido -- Southampton, I'm sorry.

18          THE COURT: We'll hear from the plaintiff.

19          MR. SUGARMAN: Good morning, your Honor.

20          May it please the court. My name is Robert  
21 Sugarman and I represent the plaintiffs.

22          This case really comes down to a very simple and  
23 straightforward issue because everything flows from  
24 whether or not the sign laws of the municipalities apply.  
25 We think it's clear that they do not apply to a wooden

1 stick.

2 And what flows from that, your Honor, is that  
3 there are no constitutional issues because the  
4 municipalities are not being asked to do anything other  
5 than refrain from obstructing the plaintiffs in performing  
6 under their agreements with Verizon and LIPA. Since the  
7 municipalities are not being asked to do anything, they  
8 don't have to do anything, there can't be a violation of  
9 the establishment laws. There is no constitutional issue  
10 with respect to the establishment.

11 With respect to state law issues, the claim is  
12 made that Verizon and LIPA have no power, absent the --

13 THE COURT: Let me ask you.

14 Why are you joining three separate defendants in  
15 one action under Rule 20?

16 MR. SUGARMAN: Your Honor, the reason we did  
17 that is because there is one Eruv that is covered by the  
18 agreements that the plaintiffs East End Eruv Association  
19 has with Verizon and LIPA.

20 There is one Eruv. It touches each of the  
21 municipalities.

22 THE COURT: You still haven't answered why you  
23 brought in three separate defendants in one action.

24 MR. SUGARMAN: Because the three separate  
25 defendants have -- acted in similar ways to prevent the

1 construction of one Eruv.

2 The Eruv, as I said, touches all three and,  
3 therefore, we thought it was more expeditious --

4 THE COURT: But the defendant is saying they are  
5 all different and they have different rules and different  
6 applications and different regulations, and some don't  
7 have any.

8 So I don't know who's on first and who's there  
9 with first.

10 MR. SUGARMAN: Well, your Honor, we dealt with  
11 that in all of our papers and most recently in our reply  
12 papers.

13 We deal with each of the --

14 THE COURT: Well, let's hear from the defendants  
15 and see how you dealt with it on that issue only.

16 MR. SUGARMAN: Whether the sign laws apply.

17 THE COURT: No.

18 Why you brought three separate defendants under  
19 one action, even though there is one God in certain  
20 religions, that doesn't open up the door to everything.

21 Go ahead. Who wants to go first?

22 MR. SOKOLOFF: Your Honor, Brian Sokoloff and  
23 I'm the Westhampton Beach.

24 THE COURT: Okay. Westhampton Beach.

25 What do you say?

1 MR. SOKOLOFF: Our case is the easiest to deal  
2 with initially.

3 Our case, our position on this application for a  
4 preliminary injunction is we haven't done anything. The  
5 plaintiffs sue us apparently because they say that  
6 something we did made Verizon and LIPA get cold feet.

7 Here is what we did. The one thing that they  
8 attach is to an affidavit by William Balcerski,  
9 B-A-L-C-E-R-S-K-I from the legal department of Verizon, he  
10 attaches a letter from the Westhampton Beach trustees to  
11 him:

12 Dear Mr. Balcerski -- it's dated May 18, 2009 --  
13 Dear Mr. Balcerski, we are writing as the board of  
14 trustees of the Village of Westhampton Beach, the  
15 village's governing body. It's the board's understanding  
16 that Verizon has again been discussing, with the Hampton  
17 synagogue, an agreement that would result in attachments  
18 to utility poles owned by Verizon and/or the Long Island  
19 Power Authority located within village limits in order to  
20 create an, quote, Eruv, close quote, under Jewish law.

21 Let me just stop right there, your Honor. It's  
22 the board's understanding that there has been a  
23 discussion. Next sentence:

24 The board further understands Verizon's position  
25 to be that it will not execute the proposed agreement, and

1 will not take or permit any action with respect to utility  
2 pole placements, unless and until the village approves the  
3 attachments, close quote.

4 Let me stop right there. The village is telling  
5 Verizon that we understand Verizon to think that it needs  
6 village approval. Next sentence:

7 For your information, the synagogue submitted an  
8 application to the village trustees in March 2008 seeking  
9 approval of an Eruv within village limits. The  
10 application was, quote, withdrawn, close quote, by the  
11 synagogue in May of 2008.

12 Since that time, the village has received --

13 THE COURT: Counselor, I don't have all day.

14 I just want to know why on that issue you  
15 shouldn't be here, or joined in with the others.

16 MR. SOKOLOFF: Because we haven't done anything.

17 THE COURT: Okay.

18 MR. SOKOLOFF: That's why we shouldn't be here.

19 That's why it's not ripe. That's why there is  
20 no 1983 claim.

21 THE COURT: All right.

22 Next.

23 MS. DEJONG: Your Honor, on that issue, the  
24 plaintiffs --

25 THE COURT: You are representing.

1 MS. DEJONG: I'm representing the Village of  
2 Quogue, your Honor.

3 THE COURT: Okay.

4 MS. DEJONG: Your Honor, the plaintiffs have  
5 lumped us all together and it truly is not fair to any of  
6 the defendants.

7 For instance, we are very different in that  
8 Quogue, Quogue's provision is not a sign provision like  
9 Southampton. It's a provision with regard to  
10 encroachments. No one resides in Quogue.

11 No one resides within the proposed Eruv area  
12 within Quogue, most importantly, there is not --

13 THE COURT: Stop.

14 Plaintiff, who lives in Quogue?

15 MR. SUGARMAN: One of the members of the East  
16 End Eruv Association.

17 THE COURT: Who?

18 MR. SUGARMAN: Lives in Quogue.

19 THE COURT: Who?

20 MR. SUGARMAN: I will get the name.

21 THE COURT: That's all I want to know, who.

22 MR. SUGARMAN: But there is another answer to  
23 why, which I'll get to if you give me an opportunity  
24 after.

25 THE COURT: Sure.



1 First let's find out the name of the person who  
2 lives in Quogue. She says nobody does, you say they do.

3 MS. DEJONG: Your Honor, in plaintiff's reply  
4 papers that's the first time we were made aware of one  
5 person who supposedly lives in Quogue, and they provided  
6 us with a name.

7 Well, that person does not live within the Eruv  
8 area that's part of Quogue. So he's totally outside the  
9 area that we are discussing. No statements were made by  
10 officials from Quogue with regard to the establishment of  
11 an Eruv.

12 All of the statements that the plaintiffs put in  
13 their paperwork are not attributed to any official from  
14 the Village of Quogue, nor are there any statements  
15 made --

16 THE COURT: Wait a minute.

17 You got off that one point and went on to  
18 something else.

19 MS. DEJONG: Judge, I thought you wanted to know  
20 the differences between the municipalities.

21 THE COURT: Are you conceding there is one  
22 person who lives in Quogue so we can get off of that?

23 MS. DEJONG: No, your Honor. I'm not conceding  
24 that.

25 I'm conceding they listed a name in their reply

1 paperwork and if, in fact, that person lives in Quogue,  
2 that person does not live within that portion of Quogue  
3 that they say is going to be part of the Eruv.

4 He lives outside of the area.

5 THE COURT: Do they have to live within that  
6 area of the Eruv or they can live within walking distance  
7 of it?

8 MS. DEJONG: Judge, I believe they have to live  
9 within the area of the Eruv.

10 THE COURT: You mean if they live two blocks  
11 away from the walk to the temple, they don't count?

12 MS. DEJONG: Well, you know, Judge, I'm sure  
13 that they can -- I'm not that familiar with Judaic law.

14 I believe that they would then have to push or  
15 carry or whatever for the two blocks and then when they  
16 get within the Eruv.

17 THE COURT: Okay.

18 MS. DEJONG: But, in any event, that person has  
19 never made himself known to the Village of Quogue.

20 The way that the Village of Quogue found out  
21 even about this Eruv is from a conversation with the mayor  
22 of Westhampton Beach. So it's like all of a sudden we are  
23 here in federal court and the Village of Quogue has had no  
24 knowledge about anything with regard to an Eruv, not until  
25 this complaint was filed.

1           Also, your Honor, we have different franchises,  
2 I'm assuming, I think there would need to be discovery  
3 with regard to this. You know that in accordance with  
4 state law the transportation corporation law that  
5 different franchises were given to the utilities to, in  
6 fact, erect poles to provide public service to the  
7 citizenry.

8           But I believe there are also poles that might be  
9 on easements that are privately created. There's a whole  
10 bunch of issues with regard to what the rights of LIPA and  
11 Verizon are, just within the Village of Quogue.

12           THE COURT: That didn't answer any of my  
13 questions if there are other problems with the poles and  
14 so forth.

15           How do you distinguish yourself from the other  
16 two, why you shouldn't all be lumped together is my  
17 question.

18           MS. DEJONG: Well, your Honor, we shouldn't all  
19 be lumped together because, No. 1, we have different  
20 ordinances.

21           No. 2, we have had no interaction, whatsoever,  
22 with the plaintiffs or with anybody wanting to establish  
23 an Eruv.

24           THE COURT: Do you have an ordinance requiring  
25 somebody to make an application or you don't have that?

1 MS. DEJONG: We have an ordinance, your Honor,  
2 that prohibits the encroachment on the public right of  
3 way, and an encroachment is basically -- and I can tell  
4 you word for word, your Honor, if you like -- I'll tell  
5 you word for word.

6 Specifically it prohibits any private use of any  
7 portion of a public right of way through any structure or  
8 device, whereupon, above or under said right of way.

9 That's basically what --

10 THE COURT: And you believe that stick  
11 interferes with the public right of way?

12 MS. DEJONG: Well, yes, your Honor.

13 At this point -- we haven't even had an  
14 opportunity to even make a decision on that. Like I said,  
15 nobody's come to apply.

16 THE COURT: How long have I known you?

17 MS. DEJONG: A long time, Judge.

18 THE COURT: Okay.

19 You think that little stick has -- obstructs the  
20 public going and coming? That's what you just told me.

21 MS. DEJONG: Your Honor, I think it fits within  
22 the definition of an encroachment under the code of the  
23 Village of Quogue.

24 THE COURT: Okay.

25 Next. On the issue of why you should not all be

1 lumped together.

2 MS. LICCIONE: Good morning, your Honor.

3 Maureen Liccione from Jaspan Schlesinger, and I  
4 can give you three reasons why the Town of Southampton is  
5 markedly different.

6 First, the lechis are absolutely signs within  
7 the Southampton sign ordinance.

8 THE COURT: The what?

9 MS. LICCIONE: 330-201 defines a sign in  
10 different ways and includes an outline or delineation.  
11 That's what this is.

12 That's exactly what this is and if you look at  
13 the Tenaflly case, the Tenaflly court called an Eruv a  
14 demarcation. A demarcation, delineation, outline.

15 THE COURT: Which court was that?

16 MS. LICCIONE: Third Circuit, your Honor.

17 So that's the first reason why we are different.

18 Second, the reason that we are different and the  
19 reason we are absolutely different also from Tenaflly is  
20 because as we put in the surreply papers and I have the  
21 witnesses here, Tenaflly was decided on the facts, and the  
22 facts here are that the Town of Southampton has an active  
23 and I will submit to the court strident enforcement policy  
24 with respect to signs on the poles.

25 The third reason we are different is because the

1 case against the town --

2 THE COURT: That's an issue of fact that will  
3 have to be decided by a hearing.

4 MS. LICCIONE: Absolutely, your Honor, and I  
5 have the witnesses here.

6 We are ready to go.

7 THE COURT: Ready to go right now?

8 MS. LICCIONE: What's that?

9 THE COURT: You are ready to go right now?

10 MS. LICCIONE: Absolutely, sir.

11 THE COURT: You can go back and continue with  
12 your arguments.

13 MS. LICCIONE: Your Honor, can I just -- the  
14 third reason that we are different?

15 THE COURT: Sure.

16 MS. LICCIONE: Thank you, your Honor.

17 Is that because with respect to the Town of  
18 Southampton, the plaintiffs have requested nothing more  
19 than an advisory opinion. We have the letter from the  
20 supervisor, the e-mail from the supervisor saying this is  
21 covered by our sign ordinance. We have an unauthorized  
22 letter from the former town attorney asking, could you  
23 tell us where you are planning to put this and if it  
24 includes Southampton.

25 And we didn't find out where it was going to be

1 in Southampton until we got the reply papers the other  
2 day.

3 Thank you, Judge.

4 THE COURT: One second.

5 (Whereupon, there was a pause in the  
6 proceedings.)

7 THE COURT: Go ahead.

8 MR. SUGARMAN: Thank you, your Honor.

9 Let me start with Ms. Liccione's last statement  
10 that the stick --

11 THE COURT: Who's statement?

12 MR. SUGARMAN: The last lawyer for Southampton.

13 THE COURT: Okay.

14 MR. SUGARMAN: That the lechi is covered by  
15 Section 330 B.

16 Unfortunately she only quotes half of the  
17 provision. It says, quote, colored bands, stripes,  
18 patterns, outlines or delineations displayed for the  
19 purpose of commercial --

20 THE COURT: She gets off the issue that I asked  
21 and now you are answering where she got off the issue.

22 MR. SUGARMAN: Okay.

23 THE COURT: Okay.

24 So I'm glad you are all doing what you want to  
25 do, but nobody wants to help me --

1 MR. SUGARMAN: Your Honor --

2 THE COURT: Can't I say something?

3 MR. SUGARMAN: I'm sorry.

4 I apologize.

5 THE COURT: All right.

6 Go ahead.

7 MR. SUGARMAN: I really do apologize.

8 THE COURT: Do your thing, counselor.

9 MR. SUGARMAN: I'm just responding to the  
10 arguments as to why each of these is different and coming  
11 back to the point I made --

12 THE COURT: Good.

13 So she's going to make the decision if you want  
14 to answer her remarks, which didn't answer my question,  
15 and you are going to answer hers, and she's going to then  
16 rebut you on what you said and nobody's going to answer my  
17 question.

18 MR. SUGARMAN: The reason -- I will answer your  
19 question.

20 THE COURT: Good.

21 MR. SUGARMAN: The reason that these three  
22 municipalities are all in this case is because there is  
23 one Eruv. It touches each of the three.

24 And each of the three municipalities has had a  
25 significant opportunity in this motion to make all of



1 their points, and one of their points as Ms. Liccione just  
2 said is they have different sign laws. Well, they have  
3 all had the opportunity to say to your Honor, our sign  
4 laws are different, and we have had the opportunity to say  
5 to your Honor, while they may be different, none of them  
6 apply to this stick.

7 They are not an encroachment on the right of  
8 way. They are not a projection on the right of way. They  
9 are not a sign for purposes of the commercial --

10 THE COURT: Okay.

11 MR. SUGARMAN: The Westhampton Beach ordinance  
12 doesn't point to anything that has to do with the Lechis.

13 Coming back to the point I made at the very  
14 beginning, your Honor, this whole motion hinges on, in the  
15 first instance, whether any of the local ordinances  
16 prohibit putting the lechis on the poles.

17 Verizon and LIPA submitted a declaration in  
18 reply which says, representatives of the municipalities  
19 have stated publicly that they will not permit the Eruv to  
20 be established, that the installation of Lechis would  
21 violate local laws, and that threatening to impose fines  
22 and/or take other legal action against Verizon New York  
23 and LIPA if they permit the installation of the lechis.

24 This is not an advisory opinion we are asking  
25 for. We have contracts with Verizon and LIPA. They are

1 prepared to go forward with the contracts. They are not  
2 going forward with the contracts because the public  
3 officials of each of these three municipalities have --

4 THE COURT: Are they included in the lawsuit?

5 MR. SUGARMAN: They brought a separate lawsuit,  
6 your Honor.

7 THE COURT: Are they here today?

8 MR. SUGARMAN: They are here today.

9 The two lawsuits have been, I don't know if they  
10 have been consolidated, they are both now before your  
11 Honor, and they are here today. They put in, as I say, a  
12 declaration in support of this motion saying what I just  
13 said.

14 So this is not a theoretical advisory opinion.  
15 It's not a request for a mandatory injunction. It's very  
16 simply a request that you enjoin these municipalities.  
17 The public officials of each have publicly said, we oppose  
18 it. We will disapprove it.

19 So we are in a situation where, on the one  
20 hand --

21 THE COURT: The only trouble is, counselor, all  
22 counsel are waiving their heads saying no one made an  
23 application to us.

24 MR. SUGARMAN: That's correct.

25 But --

1 THE COURT: Wait.

2 That's what?

3 MR. SUGARMAN: That's correct.

4 No one made a formal application for two  
5 reasons.

6 One is none of the sign laws applies, and,  
7 therefore, there is no need for a formal application and  
8 the second reason is that the public officials of each of  
9 these municipalities and I'm talking about Westhampton  
10 Beach because Mr. Sokoloff did, made public statements  
11 that any application will be denied.

12 THE COURT: Who made that statement?

13 MR. SUGARMAN: Mayor Teller, Westhampton Beach.

14 THE COURT: Who represents them?

15 MR. SOKOLOFF: I do.

16 THE COURT: Did he say he would deny all  
17 applications concerning that?

18 MR. SOKOLOFF: I don't know what the context is.  
19 I don't know who he said it to.

20 It certainly was not at a public --

21 THE COURT: You don't know whether your mayor  
22 said that and you are representing him and it was in the  
23 papers?

24 MR. SOKOLOFF: I know he didn't say it at a  
25 public meeting.

1 THE COURT: Oh.

2 He said it privately, to whom?

3 MR. SOKOLOFF: I don't know whether he said it  
4 privately or not, but whenever he said it he had a  
5 constitutional right to say.

6 He did not say anything in a public meeting. He  
7 did not do anything in a public meeting.

8 MR. SUGARMAN: Your Honor, all I know is that  
9 all of the trustees of Westhampton Beach have publicly  
10 stated if it was a private meeting we wouldn't know about  
11 it, it's publicly stated, every single one of them said,  
12 one said the Eruv will never happen on my watch.

13 THE COURT: Don't you think I need a hearing on  
14 that?

15 MR. SUGARMAN: No, your Honor, because the  
16 reason that there's no hearing necessary is because we put  
17 all of these allegations in our complaint.

18 THE COURT: Oh, and you put them in the  
19 complaint and they are denying it, but therefore I have to  
20 accept your interpretation?

21 MR. SUGARMAN: Counsel is standing up and  
22 saying, I don't really know.

23 There's no denial in any of the answering  
24 papers. There's no declaration from any public official  
25 in any of these three municipalities which says, I didn't

1 say that. I don't mean it. They are totally silent.

2 We put the allegations out there in our reply  
3 papers and there has been total silence.

4 THE COURT: And you made no application to any  
5 board whether it's required or not?

6 MR. SUGARMAN: We made no application because --  
7 that's right, because it's not required, and because it  
8 would be futile.

9 Those are the two reasons why.

10 THE COURT: Some have no rules. Some do have  
11 rules and some --

12 MR. SUGARMAN: Your Honor --

13 THE COURT: And have different rules.

14 MR. SUGARMAN: The only things that the  
15 municipalities have pointed to as to requiring an  
16 application are these sign laws.

17 In Quogue's papers, they never argue that their  
18 Section 158 really applies to a piece of wood and I think  
19 your Honor's question was spot on. Does this piece of  
20 wood encroach or project on to the right of way and there  
21 can be no factual issue that a piece of wood that's no  
22 more than an inch thick can encroach on the right of way.

23 I would suggest that there are no factual  
24 issues. There are no factual issues with respect to the  
25 applicability of the sign laws because if you look at

1       their provisions they just don't apply.

2               THE COURT: I'm setting it down for a hearing.

3               MR. SUGARMAN: Excuse me, your Honor?

4               THE COURT: I'm setting it down for a hearing.

5               We'll take witnesses, but before that time I  
6       want you to divide up this case as to which plaintiffs are  
7       suing which defendants on what theory. I'm not going to  
8       take all three of them which have different claims of  
9       violations and different notice requirements because I  
10      can't figure it out who goes to who.

11              We have to separate it because some may be right  
12      and some may be wrong and I don't know.

13              MR. SUGARMAN: Your Honor, let me just say, in  
14      none of the papers that have been put in by any of the  
15      municipalities has there been any argument that this is a  
16      provision, and your Honor asked this question, there was a  
17      provision in their local laws that requires an  
18      application.

19              There is no such provision that we know of, and  
20      the defendants have not identified any.

21              THE COURT: Someone wants to answer that.

22              Go ahead.

23              MS. DEJONG: Your Honor, if I may.

24              It has been our position all along that the  
25      plaintiffs are required to apply and to get permission.

1 And that's based on state law, and our position has always  
2 been that we shouldn't even deal with constitutional  
3 issues until we deal with the state law issues.

4 Basically the fact that --

5 THE COURT: Do you have a requirement that they  
6 have to file an application before they can put anything  
7 on the poles?

8 MS. DEJONG: Your Honor, under village law, New  
9 York State village law, the village board of trustees have  
10 exclusive control over the streets and the property within  
11 the Village of Quogue.

12 And we have advised the utilities that in order  
13 for them to now -- to apply something to the poles on the  
14 village right of way for private use they have to apply to  
15 the village, which they haven't done, and that's under  
16 village law 6-602 and village law 4-412.

17 Since they haven't done that, your Honor, since  
18 the utilities haven't done that, that's why this matter  
19 isn't ripe. Yes. They do need to apply and we told the  
20 utilities that, and ordinarily, your Honor, when the  
21 utilities disagree with that they go and do an Article 78  
22 in the state court and have a determination made by the  
23 state court as to whether or not the village is correct in  
24 requiring them to apply for permission.

25 According to the village law, the Village of

1 Quogue and the Village of Westhampton Beach is entitled to  
2 have reasonable regulations with regard to the public  
3 right of way.

4 THE COURT: How about the Town of Southampton?  
5 Do you require an application?

6 MS. LICCIONE: We require -- I just conferred  
7 with the town attorney, we require applications for  
8 certain signs.

9 The signs -- and if I just may, counsel was  
10 going to Section 202 B, it's 202 A that applies. If  
11 counsel -- the typical way that this is handled as a basic  
12 precept of municipal law --

13 THE COURT: Not typical way.

14 Do you have a requirement that they have to file  
15 an application?

16 MS. LICCIONE: No because these are prohibited.  
17 However, if they want to take the position --

18 THE COURT: Where is it prohibited in the  
19 statute?

20 MS. LICCIONE: It's 330-202 B, and demarcation  
21 or -- delineation or an outline is a prohibited sign.

22 Southampton sign ordinance is new. It was only  
23 adopted in 2004 and it's very exhaustive. But to answer  
24 your question --

25 THE COURT: Wait a minute.



1           What does that have to do with the price of tea,  
2           it was only done in 2004? It's now 2011. That's seven  
3           years later.

4           MS. LICCIONE: I was making the point that it's  
5           very exhaustive.

6           But to your Honor's question --

7           THE COURT: It's very exhaustive.

8           Is it in there or not?

9           MS. LICCIONE: Yes.

10          THE COURT: I'll ask the plaintiff, is it --

11          MS. LICCIONE: It's --

12          THE COURT: Wait.

13          MS. LICCIONE: If I can answer.

14          THE COURT: No.

15          You made a statement. I'm not asking you to  
16          answer. You said it's in there. I'm asking the plaintiff  
17          if it's in there.

18          MR. SUGARMAN: Not that we know of, your Honor.

19          MS. LICCIONE: Your Honor, if I may.

20          If someone believes that --

21          THE COURT: Read it to me where it's in your  
22          ordinance that you have to make an application.

23          MS. LICCIONE: Your Honor, if someone  
24          believes --

25          THE COURT: No.

1 Read it to me --

2 MS. LICCIONE: Someone has to --

3 THE COURT: Did you hear me?

4 You are going to do what I tell you to do. You  
5 made a statement it's in the ordinance. I say read it to  
6 me. Can you? Call upon the town attorney, maybe he or  
7 she can help you.

8 MS. LICCIONE: Your Honor, there is no -- the  
9 town code provides that when you believe a local law does  
10 not apply to you or it's being misinterpreted you make a  
11 zoning application to the ZBA.

12 THE COURT: I didn't ask you that question.

13 I asked you if they have to make an application.  
14 You referred to a particular section. All I said was read  
15 it.

16 Now you are telling me something else.

17 MS. LICCIONE: These signs are prohibited, your  
18 Honor.

19 Perhaps I didn't --

20 THE COURT: Read it to me.

21 And where you have to make an application.

22 MS. LICCIONE: These signs are prohibited so  
23 there is no specific application procedure.

24 What the town --

25 THE COURT: Oh.

1           So what you just told me before which I called  
2           you down on, maybe someone's handing you something that  
3           will help you.

4           Is there a written requirement?

5           MS. LICCIONE: Not for this type of sign.

6           I think I misunderstood your question, your  
7           Honor.

8           THE COURT: Okay. You misunderstood.

9           So there's no requirement then.

10          MS. LICCIONE: Other than going to the ZBA for  
11          an interpretation which is a standard municipal practice.

12          330-201 of the town code says the term sign  
13          shall also mean and include any display of one or more of  
14          the following, and in A is listed outline or delineation.  
15          So it's clearly prohibited under the Southampton town  
16          code.

17          I hope I have answered your question, your  
18          Honor. I apologize if I haven't.

19          THE COURT: We are now going to set down a date  
20          for a preliminary hearing.

21          I'm going to direct that you separate the three  
22          actions against the three individual defendants so we know  
23          who's suing them and for what reason are you suing them  
24          and how they violated your constitutional rights or any  
25          rights.

1                   When do you want the hearing?

2                   MR. SUGARMAN: As soon as you return from your  
3 trip.

4                   THE COURT: In the meantime, separate the three  
5 and delineate what you want from each of the defendants  
6 and why you think you are right as to that individual  
7 defendant so they can get prepared for it.

8                   MR. SUGARMAN: We can do that in a week.

9                   THE COURT: When?

10                  MR. SUGARMAN: In a week, your Honor.

11                  THE COURT: Fine.

12                  When do you want the hearing?

13                  MR. SUGARMAN: It really depends on your Honor's  
14 schedule.

15                  THE COURT: I'm coming back on the 9th of June.

16                  MR. SUGARMAN: As soon as you are able to  
17 schedule it, we'll be here.

18                  THE COURT: How about the defendants?

19                  MS. DEJONG: Your Honor, I'm going to be out of  
20 the country for three weeks beginning June 12th.

21                  THE COURT: Someone else in the firm will take  
22 over.

23                  We'll do it on the 14th. Anybody else have  
24 anything else? So on the 14th --

25                  MR. SOKOLOFF: What time, your Honor?

1 THE COURT: 9:30.

2 Who do you want to call first so we have an idea  
3 what's going on?

4 MS. DEJONG: Your Honor, if I may.

5 I will be in town for the 14th and the 15th. If  
6 there is any way that Quogue could be done first I would  
7 really appreciate it.

8 THE COURT: Okay.

9 I'll take you first.

10 MR. SUGARMAN: Your Honor, I'm not sure I  
11 understand.

12 Which witnesses are we planning on calling?

13 THE COURT: Yes.

14 MR. SUGARMAN: We --

15 THE COURT: Maybe none.

16 MR. SUGARMAN: Quite possibly none.

17 Maybe one to just describe where the Eruvs will  
18 be and why it's necessary for the Eruvs to be in each of  
19 these three municipalities.

20 THE COURT: It puts us in a bad position if we  
21 have to decide against all three at the same time, or  
22 maybe it puts you in a bad position.

23 They may have different defenses and how much of  
24 an area in feet and yards, I have no idea, it's going to  
25 cover or miles. I don't know how many poles are involved.

1 I don't know a lot of things, and you have put  
2 me in the box where all three it's a yes or a no, and I  
3 can't distinguish between each one of the towns, whether  
4 they did make an application, did they make statements,  
5 did they do things?

6 Now you are telling me you are not even going to  
7 call witnesses.

8 MR. SUGARMAN: I said the chances are we will  
9 call a witness to describe where the Eruv is.

10 THE COURT: Well, they are entitled to know who  
11 you are calling and when.

12 MR. SUGARMAN: I understand that and I can give  
13 them that information within five days.

14 THE COURT: You need five days to tell them who  
15 your witnesses are going to be?

16 MR. SUGARMAN: We have to -- frankly, we have to  
17 figure out exactly how we are going to implement your  
18 Honor's admonition.

19 THE COURT: Okay.

20 MR. SUGARMAN: And if today is -- by Monday,  
21 your Honor.

22 THE COURT: Fine.

23 MR. SUGARMAN: And then they will tell us by.

24 THE COURT: Four days to tell you who they are  
25 going to call.

1 MR. SUGARMAN: Four days.

2 Thank you.

3 MR. SOKOLOFF: Can I ask, in addition to them  
4 just giving us the names of the witnesses, what the  
5 substance of the testimony that they expect so I know how  
6 to prepare myself?

7 And then I can have counter witnesses if I need  
8 them?

9 THE COURT: What do you say to that?

10 MR. SUGARMAN: Your Honor, I can certainly  
11 generally describe the content of the witness's testimony.

12 THE COURT: Okay.

13 MR. SOKOLOFF: Thank you.

14 THE COURT: And you do the same with your  
15 witnesses.

16 MR. SOKOLOFF: Yes.

17 THE COURT: I'll ask, what happens if we go over  
18 the two days?

19 MS. DEJONG: Your Honor, I'll have somebody else  
20 there.

21 If we could deal with Quogue first.

22 THE COURT: I will take Quogue first and your  
23 first witness will be Quogue. So I'll try and accommodate  
24 you as much as possible.

25 MS. DEJONG: I appreciate it, Judge.

1 THE COURT: Okay.

2 MR. SUGARMAN: Thank you, your Honor.

3 THE COURT: We'll see you all on the 14th and  
4 15th.

5 I'm going to reserve those dates for you people.

6 Thank you.

7 MS. DEJONG: Thank you, sir.

8 MR. SUGARMAN: Thank you, your Honor.

9 (The matter concluded.)

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